

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 359 be amended to read as follows:

- 1 Page 5, delete lines 14 through 42, begin a new paragraph and insert:
- 2 "SECTION 4. IC 5-22-7.3 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2006]:
- 5 **Chapter 7.3. Negotiated Bidding**
- 6 **Sec. 1. (a) This chapter applies only to a purchasing agency in**
- 7 **the executive branch.**
- 8 **(b) Subject to the policies of the purchasing agency, a**
- 9 **purchasing agent may follow the procedure described in this**
- 10 **chapter in awarding a contract for supplies instead of awarding a**
- 11 **contract under IC 5-22-7.**
- 12 **Sec. 2. (a) A purchasing agent may issue an invitation for bids.**
- 13 **(b) An invitation for bids must include the following:**
- 14 **(1) A purchase description.**
- 15 **(2) All contractual terms and conditions that apply to the**
- 16 **purchase.**
- 17 **(3) A statement of which, if any, of the following will be used**
- 18 **to evaluate bids:**
- 19 **(A) Inspection.**
- 20 **(B) Testing.**
- 21 **(C) Quality.**
- 22 **(D) Workmanship.**
- 23 **(E) Delivery.**
- 24 **(F) Suitability for a particular purpose.**
- 25 **(G) The requirement imposed under IC 5-22-3-5.**

- 1 **(H) Any other evaluation criteria stated in the invitation**
- 2 **for bids.**
- 3 **(4) The procedure for opening the bids, including the date,**
- 4 **time, and place for opening the bids.**
- 5 **(5) A statement concerning whether a bid must be**
- 6 **accompanied by a certified check or other evidence of**
- 7 **financial responsibility that may be required in accordance**
- 8 **with policies of the purchasing agency.**
- 9 **(6) A statement concerning the conditions under which a bid**
- 10 **may be canceled or rejected in whole or in part as specified**
- 11 **under IC 5-22-18-2.**
- 12 **(7) A statement concerning whether, and the procedures**
- 13 **under which, discussions may be conducted with bidders**
- 14 **before a contract is awarded. The procedures for conducting**
- 15 **discussions with bidders must be consistent with fair**
- 16 **competition among all bidders.**
- 17 **Sec. 3. Evaluation criteria that will:**
- 18 **(1) affect the bid price; and**
- 19 **(2) be considered in the evaluation for an award;**
- 20 **must be objectively measurable.**
- 21 **Sec. 4. Only criteria specified in the invitation for bids may be**
- 22 **used in bid evaluation.**
- 23 **Sec. 5. (a) The purchasing agency shall:**
- 24 **(1) give notice of the invitation for bids in the manner**
- 25 **required by IC 5-3-1; and**
- 26 **(2) provide electronic access to the notice through the**
- 27 **computer gateway administered by the office of technology.**
- 28 **Sec. 6. (a) An employee of the purchasing agency shall open bids**
- 29 **in the presence of one (1) or more other employees of the**
- 30 **purchasing agency according to the procedure stated in the**
- 31 **invitation for bids as required by section 2(b)(4) of this chapter.**
- 32 **(b) Individuals other than employees of the purchasing agency**
- 33 **may not be present at an opening of bids unless the bids are opened**
- 34 **publicly.**
- 35 **Sec. 7. Bids must be:**
- 36 **(1) opened so as to avoid disclosure of contents to competing**
- 37 **bidders during the process of negotiation; and**
- 38 **(2) evaluated based on the requirements provided in the**
- 39 **invitation for bids.**
- 40 **Sec. 8. A contract must be awarded with reasonable promptness**
- 41 **by written notice to the lowest responsible and responsive bidder.**
- 42 **Sec. 9. (a) The purchasing agency shall prepare a bid register.**
- 43 **(b) The bid register must contain the following:**
- 44 **(1) A copy of all documents that are included as part of the**
- 45 **invitation for bids.**
- 46 **(2) A list of all persons to whom copies of the invitation for**

- 1 bids were given.
- 2 (3) A list of all bids received. The list of bids received must
- 3 include the following information:
- 4 (A) The name and address of each bidder.
- 5 (B) The dollar amount of all bid prices received during the
- 6 bidding process.
- 7 (C) The name of the successful bidder and the dollar
- 8 amount of that bidder's bid.
- 9 (4) The basis on which the award was made.
- 10 (5) Documentation of the purchasing agency's negotiating
- 11 process with bidders. The documentation must include the
- 12 following:
- 13 (A) A log of the date and times of each meeting with a
- 14 bidder. The log must include the identity of the bidder.
- 15 (B) A description of the nature of all communications with
- 16 each bidder.
- 17 (C) Subject to subdivision (6), a copy of all written
- 18 communications, including electronic communications,
- 19 with each bidder.
- 20 (6) The entire contents of the contract file except for
- 21 proprietary information included with a bid, such as trade
- 22 secrets, manufacturing processes, and financial information
- 23 that was not required to be made available for public
- 24 inspection by the terms of the invitation for bids.
- 25 (c) Except as provided in section 10 of this chapter, the bid
- 26 register is subject to public inspection only after the contract
- 27 award.
- 28 Sec. 10. (a) This section applies only if the amount of the
- 29 purchase is more than two hundred thousand dollars (\$200,000).
- 30 (b) After the purchasing agency has completed any negotiations,
- 31 the purchasing agency shall set a date, time, and place for
- 32 publishing the bid register required by section 9 of this chapter.
- 33 The date set under this subsection may not be less than seven (7)
- 34 days before the purchasing agency notifies the successful bidder of
- 35 the award of the contract.
- 36 Sec. 11. (a) The purchasing agency may establish policies to
- 37 allow any of the following:
- 38 (1) Correction or withdrawal of inadvertently erroneous bids
- 39 before or after an award.
- 40 (2) Cancellation of awards or contracts based on a mistake
- 41 described in subdivision (1).
- 42 (b) Except as provided in a rule or policy, a purchasing agency
- 43 must make a written decision to:
- 44 (1) permit the correction or withdrawal of a bid; or
- 45 (2) cancel awards or contracts based on bid mistakes.
- 46 Sec. 12. If a bidder inserts contract terms or bids on items not

specified in the invitation for bids, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may do any of the following:

(1) Declare the bidder nonresponsive.

(2) Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.

(3) Accept any of the proposed additions to the contract, subject to section 13 of this chapter.

Sec. 13. (a) The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition.

(b) A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency."

Delete page 6.

Page 7, delete lines 1 through 27.

Page 8, delete lines 10 through 42.

Page 9, delete lines 1 through 33, begin a new paragraph and insert:

"SECTION 6. IC 5-22-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** When a purchasing agent makes a written determination that the use of competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this chapter instead of competitive sealed bidding under IC 5-22-7.

(b) This subsection applies only to a purchasing agent in the executive branch. Notwithstanding subsection (a), and subject to the policies of the purchasing agency, a purchasing agent may award a contract using the procedure provided by this chapter.

SECTION 7. IC 5-22-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. **(a)** Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

(b) Except as provided in subsection (c), in conducting discussions with an offeror, information derived from proposals submitted by competing offerors may not be disclosed.

(c) This subsection applies only to a purchasing agency in the executive branch. In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may be used in discussion only if the identity of the offeror providing the information is not disclosed to others. The purchasing agency must provide equivalent information to all offerors with which the purchasing agency chooses to have discussions."

Page 10, delete lines 29 through 31, begin a new paragraph and insert:

- 1 "SECTION 9. IC 5-22-7.5-8 IS REPEALED [EFFECTIVE JULY
- 2 1, 2006].".
- 3 Renumber all SECTIONS consecutively.
(Reference is to ESB 359 as printed February 21, 2006.)

Representative Messer